

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- (d) an irrevocable burial trust over \$2500 was established on or after July 1, 1988, and the individual provides objective evidence to show that all funds in the trust are for identifiable funeral services; or
 - (2) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; the individual must provide objective evidence that the transfer was exclusively for another purpose and the reason for the transfer did not include possible or future Medicaid eligibility; or
 - (3) Consistent with 1917(c)(2)(D), an institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility service, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the state determines that denial of eligibility would work an undue hardship under the provision of §1917(c)(2)(D) of the Social Security Act.
- 3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1902 (a)(10)(A)(ii)(VI).
- 4. In this section, the individual's home is defined as the house and lot used as the principal residence and all contiguous property up to \$5,000.00.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Transfers And Trusts After August 10, 1993. The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 10, 1993, and with respect to trusts established after August 10, 1993.

§1.0 Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action:

1. by the individual or the individual's spouse,
2. by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse, or
3. by any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" has the meaning given such term in section 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing faculty or who is described in section 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in section 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- §2.0 Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in §2.2 shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of §1915 of the Social Security Act.
- §2.1 Period of Ineligibility. The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:
- A. the total, cumulative uncompensated value of all assets transferred as defined in §1.0 on or after the look-back date specified in §2.2, by
 - B. the average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.
- §2.2 Look-Back Date. The look-back date is a date that is 36 months (or, 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or Section 3,) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

§2.3 Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

A. The assets transferred were a home and title to the home was transferred to:

1. the spouse of the individual;
2. a child of the individual who is under age 21, or is blind or disabled as defined in section 1614 of the Social Security Act,
3. a sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of a least one year immediately before the date the individual becomes an institutionalized individual, or
4. a son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

B. The assets:

1. were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse,
2. were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,
3. were transferred to the individual's child who is under age 21 or who is disabled as defined in §1614 of the Social Security Act, , or to a trust (including a trust described in §3.7) established solely for the benefit of such child, or
4. were transferred to a trust (including a trust described in §3.7) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in section 1614(a)(3) of the Social Security Act.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

C. A satisfactory showing is made that:

1. the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, or
2. the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or
3. all assets transferred for less than fair market value have been returned to the individual, or
4. the Commonwealth determines that the denial of eligibility would work an undue hardship.

§ 2.4 Assets Held In Common With Another Person. In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

§2.5 Transfers by Both Spouses. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- §3.0 For Trust(s) Created After August 10, 1993. For purposes of determining an individual's eligibility for, or amount of, medical assistance benefits, subject to §3.7, these rules shall apply.
- §3.1 Trust(s) Defined. The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the United States Secretary of Health and Human Services specifies for purposes of administration of §1917(c) or (d) of the Social Security Act.
- §3.2 Creation of Trust(s) Defined. For purposes of this subsection, an individual shall be considered to have established a trust(s) if assets of the individual were used to form all or part of the corpus of the trust(s) and if any of the following individuals established the trust(s) other than by will:
- A. The individual,
 - B. The individual's spouse,
 - C. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse,
 - D. A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- §3.3 Proportional Interest In Trust(s). In the case of a trust(s) the corpus of which includes assets of an individual (as determined under §3.2) and assets of any other person or persons, the provision of this section shall apply to the portion of the trust(s) attributable to the assets of the individual.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

§3.4 Trust(s) Affected. Subject to §3.7, this section shall apply without regard to:

- A. The purposes for which a trust(s) is established.
- B. Whether the trustee(s) has or exercises any discretion under the trust(s),
- C. Any restrictions on when or whether distributions may be made from the trust(s), or
- D. Any restrictions on the use of distributions from the trust(s).

§3.5 Revocable Trust(s). In the case of a revocable trust(s),

- A. The corpus of the trust(s) shall be considered resources available to the individual,
- B. Payments from the trust(s) to or for the benefit of the individual shall be considered income of the individual, and
- C. Any other payments from the trust(s) shall be considered assets disposed of by the individual for the purposes of §2.0.

§3.6 Irrevocable Trust(s). In the case of irrevocable trust(s),

- A. if there are any circumstances under which payment from the trust(s) could be made to or for the benefit of the individual, the portion of the corpus from which, or the

income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:
 - 1. to or for the benefit of the individual, shall be considered income of the individual, and
 - 2. for any other purpose, shall be considered a transfer of assets by the individual subject to §2 , and

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- B. any portion of the trust(s) from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust(s) (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of §2, and the value of the trust(s) shall be determined for purposes of such section by including the amount of any payments made from such portion of the trust(s) after such date.

§3.7 Exceptions. This section shall not apply to any of the following trust(s):

- A. A trust(s) containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3) of the Social Security Act) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the trust(s) upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.
- B. A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3) of the Social Security Act) that meets all of the following conditions:
1. The trust(s) is established and managed by a non-profit association,
 2. A separate account is maintained for each beneficiary of the trust(s), but, for purposes of investment and management of funds, the trust(s) pools these accounts.
 3. Accounts in the trust(s) are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.
 4. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust(s), the trust(s) pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.